

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

| | | |
|--|---|-----------------------|
| Mid-Missouri Telephone Company, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. TC-2006-0127 |
| |) | |
| Southwestern Bell Telephone Company, |) | |
| T-Mobile USA Inc., Voicestream Wireless, |) | |
| and Aerial Communications, Inc., |) | |
| |) | |
| Respondents. |) | |

Reply to Motion to Dismiss

Mid-Missouri Telephone Company submits the following Reply to SBC Missouri's October 28, 2005 Motion to Dismiss:

1. Mid-Missouri agrees that SBC is not responsible for T-Mobile intraMTA traffic transited by SBC to Mid-Missouri while Mid-Missouri's Wireless Termination Tariff was in effect—after August 18, 2003. However, for such traffic terminated prior to that Wireless Termination Tariff, the only tariff applicable is Mid-Missouri's access tariff, for which SBC was Mid-Missouri's access customer. SBC is responsible for pre-August 13, 2003 traffic pursuant to Mid-Missouri's access tariff.

2. The 1986 FCC Policy Statement on Interconnection of Cellular Systems does not bar application of Mid-Missouri's tariffs to Wireless Traffic, as T-Mobile interconnected with SBC, not with Mid-Missouri.

3. In three separate complaint proceedings, the Missouri Public Service Commission has held that SBC was responsible to pay access compensation to the terminating LEC for such traffic terminating prior to February 5, 1998.

4. The Missouri Commission prospectively absolved SBC of compensation responsibility for such traffic under SBC's Wireless Interconnection Tariff, but not unless there was an agreement between Mid-Missouri and T-Mobile that encompassed compensation for this traffic. The Order approving SBC's tariff change directed that SBC and wireless carriers were not to send traffic to terminating LECs such as Mid-Missouri in the absence of an approved interconnection agreement. The traffic at issue here terminated in the absence of an approved interconnection agreement. As a consequence the only tariff applicable is Mid-Missouri's access tariff, for which SBC was Mid-Missouri's access customer.

5. For T-Mobile traffic transited by SBC pursuant to interconnection agreement with T-Mobile, that agreement also prohibited T-Mobile and SBC from sending this traffic to Mid-Missouri in the absence of an approved interconnection agreement. As a consequence the only tariff applicable is Mid-Missouri's access tariff, for which SBC was Mid-Missouri's access customer.

6. Prior to August 18, 2003, Mid-Missouri was not party to any approved reciprocal compensation agreement covering T-Mobile traffic. Therefore it is not material if any of the traffic in dispute here was intraMTA, as such traffic is only subject to reciprocal compensation if there is an approved reciprocal compensation arrangement or agreement in effect. In the absence of same, it is lawful to apply access tariffs. After August 18, 2003, Mid-Missouri Wireless Termination Service Tariff applied to intraMTA T-Mobile traffic. After August 18, 2003 SBC is only responsible for interMTA T-Mobile traffic.

7. The decisions of This Commission and the Missouri Courts, stemming from the access tariff clarification filed in TT-99-428, do not control. The tariff language at issue in those proceedings was merely a clarification that the access tariff would continue to apply until an interconnection agreement was effective. Rejection of that clarification language did not discontinue operability of the existing access tariff that remaining in effect. That existing access tariff had previously been held by the Missouri Commission to apply to wireless traffic, with SBC being responsible to pay. Mid-Missouri does not seek to apply any tariff “retroactively”. Mid-Missouri seeks application of the access tariff in effect at the time the traffic terminated, until the access tariff was replaced August 18, 2003 by the wireless termination service tariff.

8. Recent FCC precedent does control this issue. That precedent does permit application of state tariff in the absence of an approved reciprocal compensation agreement. In its February 17, 2005 decision in the T-Mobile declaratory petition aspect of the Unified Carrier Compensation Docket, the FCC upheld the application of state tariffs to wireless traffic until April 29, 2005, when the FCC prospectively prohibited the application of tariffs to intraMTA wireless traffic. The traffic at issue here terminated prior to April 29, 2005, and under the FCC decision it is lawful to apply access tariffs to this traffic.

The FCC Decision of February 17, 2005 held that state tariffs could apply in the absence of an approved agreement, until April 29, 2005. The FCC held that its existing rules did not preclude or preempt the application of state tariffs, and that by routing the traffic to terminating LECs carriers were obligated to access the terms of the state tariffs. The FCC cited with approval the 2003 Missouri Court of Appeals decision in Sprint PCS,

which upheld the application of state tariffs in light of the calculated inaction of not completing the interconnection agreement process.

9. Under its tariff and interconnection agreements with T-Mobile, SBC is entitled to secondary liability and or indemnification from T-Mobile for access compensation paid to Mid-Missouri. There will be no harm to SBC in making it pay access for the pre-January 13, 2005 traffic at issue here.

WHEREFORE, having replied to SBC's Motion to Dismiss, Mid-Missouri respectfully requests that such Motion be overruled and denied.

/s/
Craig S. Johnson, Atty.
Mo Bar # 28179
1648-A East Elm St.
Jefferson City, MO 65101
(573) 632-1900
(573) 634-6018 (fax)
craig@csjohnsonlaw.com
Attorney for Complainants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was electronically mailed to the attorneys for T-Mobile, SBC, Staff, and OPC this 31st day of October, 2005.

/s/
Craig S. Johnson